

**DISADVANTAGED BUSINESS ENTERPRISES PROVISIONS
FOR
CONTRACTS WITHOUT A GOAL
(Race-Neutral)**

1. POLICY STATEMENT

It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the contracts financed in whole or in part with federal funds. Requests for certification by the Virginia Department of Minority Business Enterprise (VDMBE) or Metropolitan Washington Airports Authority (Airports Authority) may be obtained by submitting the Uniform Certification Application. A listing of DBE firms may be obtained on-line at www.dmbv.virginia.gov or www.metwashairports.com or by contacting:

Virginia Department of Minority Business Enterprise
1111 East Main Street, Suite 300
Richmond, Virginia 23219
(804) 786-8565

or

Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001
(703) 417-8625

The list does not represent all DBEs available in the trade or specialty areas required by this contract, but merely those firms that have applied to DMBE or the Airports Authority and have been granted certification.

Contractors are encouraged to take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the contractor intends to subcontract a portion of the work items on the project, the contractor is encouraged to seek out and consider DBEs as potential subcontractors. The contractor is encouraged to contact DBEs to solicit their interest, capability and qualifications. Any agreement between a contractor and a DBE whereby the DBE promises not to provide services to other contractors is prohibited.

49 CFR Part 26 requires VDOT to collect certain data about firms attempting to participate in VDOT contracts.

If a DBE is not certified, the DBE must become certified with the Virginia Department of Minority Business Enterprise (VDMBE) and/or Metropolitan Washington Airports Authority (Airports Authority) prior to the contractor's response being submitted. If a DBE is the prime contractor, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE subcontractors. DBE prime contractors are encouraged to make the same outreach efforts as other contractors. DBE credit will be awarded only for work actually being performed by themselves and their subcontractors only if the subcontractors are DBEs. A DBE must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

DBE certification entitles contractors to participate in VDOT's DBE program. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.

1. **DBE PROGRAM DEFINITIONS**

- A. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Small Business Concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.

"Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Department pursuant to 49 CFR Part 23.62.

Members of the following groups are presumed to be socially and economically disadvantaged:

"Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

"Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

"Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

"Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;

"Subcontinent-Asian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

Women, regardless of ethnicity or race.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

"Owned and Controlled" means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.

"Manufacturer" means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

"Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in

its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Other Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or the Department to meet the social and economic disadvantage criteria described below.

Social Disadvantage

The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

The individual must demonstrate that he/she has personally suffered social disadvantage.

The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.

The individual's social disadvantage must be chronic, longstanding, and substantial, not fleeting or insignificant.

The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.

A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

Economic Disadvantage

The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.

The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets
- personal and business net worth
- personal and business income and profits

2. Contractor's Obligation

2.1 During the term of the contract, the contractor shall continue to make good faith efforts to ensure that DBEs committed to in the bid have maximum opportunity to successfully perform in the contract. These efforts shall include but not be limited to the following:

2.1.1 Negotiating in good faith to attempt to finalize and execute a subcontract agreement with the DBEs committed to in the Bid.

If DBE participation has been established; then sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid.

However, such action will not relieve the Contractor of its responsibility for complying with the reduced DBE goal during the life of the contract or any administrative sanctions as may be appropriate.

2.1.2 Continuing to provide assistance to DBE subcontractors or suppliers in obtaining bonding, lines of credit, etc., if required by the contractor.

2.1.3 Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting

Department approval to substitute for the DBE subcontractor.

2.1.4 As with all subcontractors, timely payment of all monies due and owing to DBE subcontractors and suppliers in accordance with the prompt payment requirements per Article 2.1 of Chapter 7 of Title II of the Code of Virginia (Virginia Procurement Act).

2.1.5 Timely submittal of complete and accurate DBE monthly progress reports in accordance with Article 3.3 below.

2.2 Substitution of Subcontractors -- If a contractor requests a substitution of DBE subcontractors or suppliers, the contractor shall exert good faith efforts to replace a DBE subcontractor with another DBE subcontractor, subject to the approval of the Department.

2.3 Contract Compliance Reporting Requirements -- The contractor shall submit progress narratives to the Department, in conformance with the currently approved schedule, reflecting its DBE participation.

2.4 Change in Contract Amount -- The dollar amount of change orders, or any other contract modifications that increase or decrease the work area in which DBE's participation has been committed to in the proposal, shall be commensurately added to, or subtracted from, the total contract base figure used to compute actual dollars paid to DBEs. Revised total contract dollar values shall be reflected in the monthly progress report submitted to the Department and referenced in Section 3.3 above.

3. DBE Certification

3.1 DBE firms must be certified at the time of bid submittal.

3.2 A current DBE list may be obtained on-line at www.DMBE.state.va.us or www.metwashairports.com by contacting:

Virginia Department of Minority Business Enterprise,

1111 East Main Street, Suite 300

Richmond, Virginia 23219

(804) 786-8565

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Metropolitan Washington Airports Authority (Airports Authority)

1 Aviation Circle

Washington, DC 20001

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